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11 *Attorney for Petitioner Lafayette D. Holmes, Jr.

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Lafayette D. Holmes, Jr.,

15 Petitioner,

16 v.

17 Joe Gentry, *et al.*,

18 Respondents.

Case No. 2:17-cv-01980-RFB-GWF

**Unopposed motion to extend time
to file second amended petition**

(First request)

19 Mr. Holmes respectfully requests an extension of 74 days, up to and including
20 Friday, April 16, 2019, to file his second amended petition. Respondents do not
21 oppose.

1 In March of 2018, this court denied Mr. Holmes's motion to appoint counsel.¹
2 Days later, Mr. Holmes filed a *pro se* amended petition for a writ of habeas corpus,²
3 and again moved for this court to appoint counsel.³

4 After consideration of these updated pleadings, on November 2, 2018, this
5 court determined that Mr. Holmes is unable to afford counsel and "the issues
6 presented [in this case] warrant the appointment of counsel."⁴ This court
7 provisionally appointed the Federal Public Defender, and ordered that if the
8 Federal Public Defender undertakes representation here, the deadline to file a
9 second amended petition will be 60 days from the date of appearance.⁵

10 Thereafter, the Federal Public Defender promptly began its extensive
11 conflict-check process and determined that this office is able to represent Mr.
12 Holmes. The office assigned undersigned counsel to represent him, and entered a
13 notice of appearance on December 3, 2018.⁶ This rendered a deadline of February 1,
14 2019, for Mr. Holmes to file a second amended petition.⁷

15 Mr. Holmes's counsel requires additional time to effectively represent Mr.
16 Holmes and file an amended petition on his behalf. First, the Federal Public
17 Defender is still in the process of obtaining records from prior counsel and
18 examining the records the office has obtained to date. Additional time is required to
19 complete this process. Second, due to the holidays and the demands of other cases,
20 counsel has been unable to travel to Ely State Prison to visit with Mr. Holmes yet.

22 ¹ ECF No. 11.

23 ² ECF No. 12.

24 ³ ECF No. 13.

25 ⁴ ECF NO. 14.

26 ⁵ *Id.*

27 ⁶ ECF No. 16.

⁷ *See* ECF No. 14 at 1–2.

1 Additional time is required for this meeting to occur, which is essential to counsel's
2 representation of Mr. Holmes.

3 Third, the demands of counsel's schedule have prevented him from meeting
4 the current deadline. Among other things since December 3, 2018, counsel has
5 dedicated a substantial amount of time advising and meeting with another client, as
6 well as conferring with the Nevada Attorney General's office, for the case of *Hunt v.*
7 *Williams*, No. 2:14-cv-1054-RFB-NJK (D. Nev.), for which this court has set an
8 evidentiary hearing. Counsel for Mr. Holmes is also lead counsel for Mr. Hunt.

9 Further, counsel has been working diligently to meet the following deadlines
10 and filing dates, among others: December 4, 2018 reply brief, *Vincent v. Williams*,
11 No. 17-16992 (9th Cir.); December 12, 2018 amended petition, *Ojeda-Enriquez v.*
12 *Warden, LCC*, No. 2:18-cv-01207-RFB-VCF (D. Nev.); December 21, 2018 reply to
13 answer, *White v. Wickham*, No. 3:04-cv-00412-GMN-CBC (D. Nev.); January 2, 2019
14 second amended petition, *Ross v. Baker*, No. 2:13-cv-01562-JCM-CWH (D. Nev.);
15 January 16, 2019 genetic marker petition, *Zakouto v. State*, No. 01C173183 (8th J.
16 Dist. Ct. Nev.); January 18, 2019 amended petition, *McNair v. Baca*, No. 3:18-cv-
17 00308-HDM-CBC (D. Nev.); January 28, 2019 response to motion to dismiss,
18 *Hernandez v. LeGrand*, No. 3:17-cv-00697-MMD-WGC (D. Nev.); February 4, 2019
19 amended petition, *Morales v. Williams*, No. 2:18-cv-00583-GMN-CWH (D. Nev.);
20 February 7, 2019 amended petition, *Garcia v. NDOC*, No. 2:17-cv-03095-JCM-CWH
21 (D. Nev.); February 29, 2019 amended petition, *Cardenas v. Neven*, No. 3:15-cv-
22 00476-MMD-CBC (D. Nev.).

23 Furthermore, counsel has been engaged in negotiations with the State after
24 uncovering new evidence in *Love v. State*, No. 2:17-cv-2419-JAD-PAL, ECF Nos. 16,
25 20 (D. Nev. 2018). And counsel was required for a hearing on January 29, 2019 in
26 the Eighth Judicial District Court for the State of Nevada, for the case of *Zakouto v.*
27 *State*, No. 01C173183 (8th J. Dist. Ct. Nev.). Finally, counsel will be out of the office

1 to travel for necessary client visitation on or about February 15, 2019, and March
2 14–15, 2019. Undersigned counsel and co-counsel plan to drive to Ely, Nevada, to
3 visit Mr. Holmes on March 30, 2019, their earliest opportunity due to conflicting
4 schedule demands.

5 These scheduling demands have prevented counsel from meeting Mr.
6 Holmes's February 1, 2019 deadline and will necessitate the requested additional 74
7 days for counsel to adequately represent Mr. Holmes and prepare and file an
8 effective second amended petition on his behalf.

9 On January 31, 2019, Deputy Attorney General Erin L. Bittick, on behalf of
10 respondents, indicated that respondents have no opposition to the instant request
11 for a 74-day extension. The parties agree that respondents' non-opposition is a
12 professional courtesy and should not be construed as agreeing with any of the
13 representations in this motion or as waiving any procedural defenses to the petition.

14 This motion is not filed for the purposes of undo delay but instead, is filed in
15 the interests of justice. Accordingly, Mr. Holmes respectfully requests this court
16 extend the deadline to file a second amended petition by 74 days, up to and
17 including **April 16, 2019**.

18
19 Dated February 1, 2019.

20 IT IS SO ORDERED:

Respectfully submitted,

21
22 Rene L. Valladares
Federal Public Defender

23 
24 RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

25 /s/ S. Alex Spelman
S. Alex Spelman
Assistant Federal Public Defender

26 DATED this 5th day of February, 2019.

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Participants in the case who are registered CM/ECF users will be served by the CM/ECF system and include: Erin L. Bittick.

Lafayette D. Holmes
#1035895
Ely State Prison
PO Box 1989
Ely, NV 89301

/s/ Arielle Blanck
An Employee of the
Federal Public Defender